

NTSB Order No. EA-5110

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 9th day of September, 2004

Docket SE-17150

The respondent has appealed from the written decision Administrative Law Judge William E. Fowler, Jr., served in this emergency revocation proceeding on July 21, 2004.<sup>1</sup> By that order, the law judge dismissed the appeal to the Board from the Administrator's revocation order as untimely.<sup>2</sup> We deny the

<sup>2</sup>The Administrator's emergency order revoked respondent's airman certificate (with airline transport pilot and commercial pilot privileges) for his alleged unauthorized endorsements of the logbooks of two airmen in violation of FAR sections 61.3(d)(2)(iii) and 61.59(a)(2).

appeal.<sup>3</sup>

Respondent does not contest the fact that his appeal was filed three days late, five days after he received the Administrator's revocation order. Rather, he maintains, through counsel, that his tardy filing should be excused because the delay was attributable to his efforts to locate counsel to represent him in the matter. We agree with the law judge that this circumstance does not justify respondent's failure to advise the Board of his intent to appeal before the deadline for doing so expired.<sup>4</sup> The issue is not, as counsel for the respondent suggests, whether respondent acted with dispatch in securing legal representation. Rather, the issue is whether respondent's asserted desire to obtain counsel to file a notice of appeal prevented him from contacting the Board before his time ran out. Plainly, it did not.<sup>5</sup> Respondent simply chose to ignore a known deadline for a reason he would have learned, had he called the Board, would not have been sufficient to support an extension of time for the essentially pro forma task of filing a notice of

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<sup>3</sup>The Administrator has filed a reply opposing the appeal.

<sup>4</sup>The Administrator's order included appeal rights that informed respondent of the service date of her order, the period within which he needed to act to file an appeal with the Board, and the Board's address and telephone number.

<sup>5</sup>See Administrator v. Schneider, 5 NTSB 136 (1985) ("Respondent's obligation, whether performed personally or by his attorney on his behalf, was to file a notice of appeal within the period prescribed by our rules.") See also, Administrator v. Ehl, 5 NTSB 569 (1985) ("[T]he late notice of appeal is not excused by the fact that respondent did not retain counsel until after the notice was due.").

appeal.<sup>6</sup>

As we find no error in the law judge's conclusion that the respondent did not demonstrate good cause for the untimeliness of his appeal from the emergency revocation order, it will be sustained.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The respondent's appeal is denied; and
2. The July 21, 2004 order of the law judge is affirmed.

ENGLEMAN CONNERS, Chairman, ROSENKER, Vice Chairman, and CARMODY, HEALING, and HERSMAN, Members of the Board, concurred in the above opinion and order.

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<sup>6</sup>More to the point, a respondent's timely oral advice that he wanted to appeal would likely provide adequate justification for accepting promptly submitted written confirmation.